

IN THE CHANCERY COURT OF DAVIDSON COUNTY, TENNESSEE
FOR THE TWENTIETH JUDICIAL DISTRICT AT NASHVILLE

STATE OF TENNESSEE,)	
)	
Petitioner,)	
)	
v.)	No. _____
)	
AIRPORT CHEVROLET, INC., a Tennessee)	
corporation, doing business as AIRPORT)	
CHEVROLET and AIRPORT HYUNDAI,)	
formerly known as BILL HEARD)	
CHEVROLET, INC. - MEMPHIS, a Tennessee))	
corporation, formerly doing business as BILL)	
HEARD CHEVROLET,)	
)	
Respondent.)	

ASSURANCE OF VOLUNTARY COMPLIANCE

THIS ASSURANCE OF VOLUNTARY COMPLIANCE (“Assurance”) is given by

AIRPORT CHEVROLET, INC., a Tennessee corporation, doing business as AIRPORT

CHEVROLET and AIRPORT HYUNDAI, formerly known as BILL HEARD CHEVROLET INC. -

MEMPHIS, a Tennessee corporation also formerly doing business as BILL HEARD CHEVROLET of

Memphis, Tennessee (“Respondent”), to PAUL G. SUMMERS, Attorney General and Reporter for

the State of Tennessee (“Attorney General”), on behalf of DAVID A. MCCOLLUM, the Director of

the Tennessee Division of Consumer Affairs of the Department of Commerce and Insurance

 (“Division”).

WITNESSETH:

Some of the facts and circumstances surrounding the execution of this Assurance are as follows:

A. The Division and the Attorney General conducted an investigation of specific business practices of Respondent. These practices include charging consumers for an item labeled “sales tax” or “state and local sales tax” on the consumer’s contract that actually includes more than sales tax. In this particular case, it includes the state business tax which is collected from the business. State law does permit this tax to be separately billed to consumers if the dealership so elects. Respondent’s business

practices are more fully described in the State’s Petition. As a result of the investigation, the Division and the Attorney General determined that certain acts and practices of Respondent violated the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. §§ 47-18-101, *et seq.* (the “Act”).

B. Respondent neither admits nor denies any wrongdoing. Further, pursuant to Tenn. Code Ann. § 47-18-107(c), acceptance of this Assurance by Respondent shall not be considered an admission of a prior violation of the Act.

C. Therefore, pursuant to Tenn. Code Ann. § 47-18-107, Respondent desires to give this Assurance, and the Attorney General desires to accept it, in order to avoid the expense of litigation.

NOW, THEREFORE, acting pursuant to Tenn. Code Ann. § 47-18-107, Respondent gives, and the Attorney General accepts, the following assurances:

1. DEFINITIONS

As used in this Assurance and accompanying Agreed Order, the following words or terms shall have the following meanings:

- 1.1 “Assurance of Voluntary Compliance” or “Assurance” shall refer to this document entitled Assurance of Voluntary Compliance in the matter of *State of Tennessee v. Airport Chevrolet, Inc., a Tennessee corporation, doing business as Airport Chevrolet and Airport Hyundai, formerly known as Bill Heard Chevrolet, Inc. - Memphis, a Tennessee corporation also formerly doing business as Bill Heard Chevrolet.*
- 1.2 “Consumer” means any person, a natural person, individual, governmental agency or other entities, partnership, corporation, trust, estate, incorporated or unincorporated association, and any other legal or commercial entity however organized.
- 1.3 “Division” or “Division of Consumer Affairs” shall refer to the Tennessee Division of Consumer Affairs of the Department of Commerce and Insurance.
- 1.4 “Respondent” shall refer to Airport Chevrolet, Inc., Airport Chevrolet, Airport Hyundai, Bill Heard Chevrolet, Inc. - Memphis, Bill Heard Chevrolet and/or any and all officers, owners, employees, agents and representatives of Airport Chevrolet, Inc., Airport Chevrolet, Airport Hyundai, Bill Heard Chevrolet, Inc. - Memphis or Airport Chevrolet–Hyundai.
- 1.5 “Petitioner”, “State of Tennessee”, or “Attorney General” shall refer to the Office of the Tennessee Attorney General and Reporter.
- 1.6 “Tennessee Consumer Protection Act” or “Consumer Act” shall refer to the Tennessee Consumer Protection Act of 1977 and related statutes found at Tenn. Code Ann. §§ 47-18-101, *et seq.*
- 1.7 “Tennessee Motor Vehicle Commission regulations” or “Motor Vehicle regulations” shall refer to the rules and regulations relating to the Motor Vehicle Commission located

at Tenn. Code Ann. §§ 55-17-101, *et seq.* and the applicable Rules of the Tennessee Motor Vehicle Commission at Chapter 0960-1, *et seq.*

2. JURISDICTION

2.1 Jurisdiction of this Court over the subject matter herein and over the person of the Respondent for the purposes of entering into and enforcing this Assurance and Agreed Order is admitted. Jurisdiction is retained by this Court for the purpose of enabling the State to apply such further orders and directions as may be necessary or appropriate for the construction, modification or execution of this Assurance and Agreed Order, including enforcement of compliance therewith and assessment of penalties for violation(s) thereof. Respondent agrees to pay all court costs and attorneys' fees and any costs associated with any successful petitions to enforce any provision of this Assurance and Agreed Order against Respondent.

3. VENUE

3.1 Pursuant to Tenn. Code Ann. § 47-18-107, venue as to all matters between the parties relating hereto or arising out of this Assurance is solely in the Chancery Court of Davidson County, Tennessee.

4. PERMANENT INJUNCTION

Accordingly, it is hereby agreed that upon approval of the Court, Respondent shall be permanently and forever enjoined and bound from directly or indirectly engaging in the practices set forth herein:

4.1 Respondent shall be required to maintain reasonable and appropriate training programs and procedures to ensure that all of the injunctive provisions set forth herein are complied with and that all employees are aware of the Respondent's obligations to comply with this injunction.

4.2 Respondent shall be prohibited from directly or indirectly representing to a consumer that a transaction is final or complete, if such is not the case.

4.3 Respondent shall be prohibited from selling or otherwise disposing of a consumer's trade in vehicle until the financing for a vehicle purchased by the consumer that traded in a vehicle is complete and final.

4.4 If Respondent directly or indirectly advertises that credit is "conditionally approved" or words of similar import, Respondent shall clearly and conspicuously state any qualifications or conditions to the approval immediately adjacent to the offer if the offer is in print, or immediately following the offer if the offer is verbal, and shall not use language in a disclaimer separated from the offer to limit the offer itself.

4.5 Respondent shall not directly or indirectly advertise that credit is "pre-approved" or "approved", if such is not the case.

4.6 Respondent shall not directly or indirectly represent that a consumer can obtain credit regardless of a "bankruptcy" if the bankruptcy must be discharged for the consumer to obtain credit or if the bankruptcy must be filed under a certain chapter.

4.7 Respondent shall not directly or indirectly represent that a consumer can obtain credit regardless of past credit problems if the consumer has a job, if the job must pay a certain amount for a certain time frame or if the job must have been held for a certain length of time.

4.8 Respondent shall be prohibited from directly or indirectly obtaining or requesting more "drive out" license tags from the State of Tennessee than permitted by state law.

4.9 Respondent shall be prohibited from directly or indirectly failing to submit all required documentation to the State of Tennessee required to obtain a certificate of title for consumers within a reasonable time after execution of the sales contract but in no event longer than 28 days, unless the Respondent is unable to comply because (a) the title is still in the possession of the state agency or the lending institution (b) Respondent has made appropriate, timely written requests to the state agency or lending institution to receive the title or (c) the customer is not cooperating with the process and timely written requests have been provided to the customer for the needed information. Further, without limiting the scope of this section, Respondent shall be required to take all affirmative steps to obtain and maintain appropriate drive out tags for their consumers including obtaining such tags from the clerk's office or state highway patrol, if necessary.

4.10 When offering a prize, gift or award to a consumer, Respondent shall be prohibited from directly or indirectly failing to fully comply with Tenn. Code Ann. §§ 47-18-120 and 124.

4.11 When offering a prize, gift, award, incentive promotion or thing of value, Respondent shall clearly and conspicuously disclose the approximate verifiable retail price of each prize, gift, award, incentive promotion or thing of value offered immediately adjacent to the reference to each such prize, gift, award, incentive promotion or thing of value. Additionally, Respondent shall have substantiation for the approximate verifiable retail value as required by Tenn. Code Ann. §§ 47-18-120(c)(1)(D) and(E).

4.12 When offering a prize, gift, award, incentive promotion or thing of value, Respondent shall be prohibited from, directly or indirectly, failing to clearly and conspicuously disclose a statement of the odds in Arabic numerals immediately adjacent to each item offered as a prize, gift or award.

4.13 When offering a prize, gift, award, incentive promotion or thing of value, Respondent shall be prohibited from, directly or indirectly, requiring a consumer or person to incur any monetary obligation, excluding nominal postage costs, in order to determine which, if any, prize the consumer or person is offered or will receive, or to continue to remain eligible to receive any prize.

4.14 Respondent shall be prohibited from directly or indirectly failing to comply with Tenn. Code Ann. § 67-1-112, which requires that the business tax be a separate item if the dealership elects to pass it on to its customers. For the purposes of this Assurance, separate item shall mean a separate listing stating “business tax” not intermingled with any other listing.

4.15 Respondent shall be prohibited from directly or indirectly representing to consumers that an amount is sales tax (or term or phrase of similar import), when in fact that amount includes items other than sales tax. Further, Respondent shall be prohibited from directly or indirectly representing that a fee, item or charge or amount is for a certain thing, if such is not the case.

4.16 Respondent shall be prohibited from failing to clearly and conspicuously respond to questions regarding the “business tax”. Without limiting the scope of this provision, Respondent is required to clearly and conspicuously inform consumers that the business tax is a tax collected from the dealer and not the consumer and that state law permits but does not require the dealer to pass the tax on to the consumer.

4.17 Respondent shall be prohibited directly or indirectly from failing to provide each consumer a copy of each and every document they sign, including but not limited to, powers of attorney, arbitration agreements, agreements regarding financing, sales contracts and buyer’s guides.

4.18 Respondent shall be prohibited from directly or indirectly requesting consumers during the purchase of a vehicle or during the financing of a vehicle to sign blank forms or forms that have blanks not yet completed that will be completed at a later time. Nothing in this section shall prevent a consumer from requesting to sign a Department of Safety limited power of attorney with a blank for the name of the person representing the car dealership to transfer the title of their vehicle if the consumer elects to do so after being told they are not required to complete the form but it may prevent them from having to return to the dealership to sign an additional power of attorney to transfer the title of the vehicle. The only information that may be left blank on the limited power of attorney form is the name of the person that the Respondent will use to transfer the title. All other information, such as the vehicle identifying information, must be completed prior to the consumer signing the document. Defendants shall be required to have any signatures notarized as required by law, *i.e.* the signature must be notarized at the time of the signature and in the presence of the consumer while signing.

4.19 Respondent shall be prohibited from directly or indirectly failing to correctly execute a power of attorney with a consumer including not having the signature notarized while the consumer is present.

4.20 Respondent shall be prohibited from directly or indirectly using any power of attorney with the Department of Safety or any other entity to change the title of a vehicle if the power of attorney was not fully completed prior to obtaining the consumer's signature and the form was not notarized with the consumer present.

4.21 Respondent shall be prohibited from directly or indirectly, using or employing symbols, logos, forms or other representations that might lead a consumer to believe that the mailing is from a governmental entity.

4.22 In the event personnel of the Motor Vehicle Commission or any other agency or entity of the State of Tennessee request to review Respondent's documents on site at the dealership, Respondent will either provide work space acceptable to such personnel or will deliver the documents to a state office in Shelby County, Tennessee, selected by such personnel.

5. RESTITUTION

5.1 Respondent shall be required to refund the amount of the actual business tax paid by any eligible consumer who purchased a vehicle from Respondent who meets the following criteria:

- (a) The transaction was a final purchase which was not subsequently rescinded;
- (b) The vehicle was purchased between July 1, 1999 and June 30, 2000;
- (c) The final purchase documents signed by the consumer did not separately itemize the business tax but the business tax was collected from the consumers. (For the purposes of this Assurance of Voluntary Compliance Respondent will be considered to have separately itemized the business tax if the Respondent has a final document signed by the consumer which separately itemized the business tax on a different line from sales tax and other taxes); and
- (d) The consumer completes and returns a refund form to the State, the Division of Consumer Affairs (“DCA”) or the Respondent postmarked within seventy-five (75) days of receipt of the Notice. This date will be calculated by adding three (3) business days to the date that each notice was placed in the United States mail.

As used herein a refund shall be a full monetary refund of the entire amount in excess of sales tax (including any local sales tax option) paid by the consumer that was listed under “sales tax”, “state and local taxes” or any other title other than “business tax” on any contract or bill of sale. For non-Tennessee resident consumers, Respondent shall make a full monetary refund of the entire amount in excess of sales tax (including any local sales tax option) or any other tax required by law to be collected from and paid by the consumer in that consumer’s state of residence.

5.2 No later than thirty (30) days after entry of this Assurance, a Notice identical to the one attached as Exhibit A shall be mailed to each eligible consumer by Respondent at Respondent’s expense. The Notice shall also include a refund claim form identical to the one which is attached as Exhibit B. Respondent shall notify the State of the date the Notices were sent within three (3) business days of mailing the Notices. If Notices were sent on different dates, Respondent must include in the Notice to the State the names of the consumers which were mailed on each different date.

5.3 The refund claim forms direct consumers to return the form to the Division of Consumer Affairs. The Division of Consumer Affairs will provide the Respondent with all refund forms returned by consumers within a reasonable time after the seventy-five (75) day period has concluded. After receipt of the refund forms, the Respondent will have forty-five (45) days to verify the consumer’s eligibility with Respondent’s records and to actually pay the refund amount.

5.4 During the forty-five (45) day period, if the Respondent believes that a consumer who is not eligible to receive a refund has returned a refund form, Respondent shall provide written documentation of its reasons to deny the refund to the Director of the Division of Consumer Affairs and a copy to the applicable consumer. The Division shall be permitted to also contact consumers and request a response to the Respondent's denial.

5.5 Within the forty-five (45) day period, if a refund request is not contested, Respondent shall mail the individual's refund along with the letter attached as Exhibit C.

5.6 If a refund amount is contested by the Respondent, the Director of the Division of Consumer Affairs, acting reasonably under the terms of this Assurance of Voluntary Compliance, shall make a final, non-appealable decision regarding whether the contested refund claim form will be paid. The Respondent shall be required to provide the contested response simultaneously to the consumer along with the letter attached as Exhibit D. Once the Director has issued a determination that a refund should be paid, Respondent shall pay the refund amount in full within fourteen (14) days. Such a refund shall be mailed along with the letter attached as Exhibit C.

5.7 All items required to be mailed pursuant to this section shall be mailed in conformity with the following:

- (A) No other materials, including promotional materials, may be included in any mailing to consumers.
- (B) The materials required by this section must be mailed via first class postage paid mail through the United States Postal Service. The mailing must be sent in envelopes chosen at the sole discretion of the Attorney General and Reporter. All envelopes must be clearly marked "POSTMASTER: ADDRESS CORRECTION REQUESTED AND PLEASE FORWARD IF APPLICABLE". The Notice mailing clearly and conspicuously shall also state "IMPORTANT INFORMATION REGARDING CLAIMING A MONEY REFUND" on the front of the envelope. In the event any envelope is returned with a corrected or forwarding address, Respondent shall again offer the full package to the consumer via first class mail through the United States Postal Service at the correct address. For said consumers, the seventy-five (75) day period shall not commence until the date of mailing of the second notice plus three (3) business days to the corrected address. The Division of Consumer Affairs shall receive written notification of the name, corrected address and date of mailing the second notification to any consumer within five (5) days of mailing the second notice.
- (C) All consumers who make a written request postmarked no later than seventy-five (75) days plus three (3) business days after the mailing of Exhibit A will receive a full monetary refund as set forth in paragraph 5.1. To comply with this section, the consumer refund request must be postmarked within 75 days plus 3 business days of

the mailing of Exhibit A to eligible consumers. All refund requests will be honored regardless of whether they are received by the Respondent or any agency of the State.

- (D) Consumer refunds shall be made by check drawn on an account with a sufficient cash balance to fund all refunds and shall not consist of credits, discounts or other partial reimbursement of the purchase price. All consumer refunds shall be provided to the consumer within forty-five (45) days of receipt of a request for a refund form.
- (E) In the event Respondent is unable to locate eligible consumers entitled to a refund, those funds due such consumers shall be treated as unclaimed property in the possession of the State of Tennessee pursuant to the Uniform Disposition of Unclaimed Property Act, Tenn. Code Ann. § 66-29-101, *et seq.* These funds may be delivered to the Treasurer prior to the statutory due date. The Respondent shall provide a report to the Attorney General and Reporter within four (4) months of the entry of the Order which details the amounts delivered to the Treasurer for treatment as unclaimed property under the State statute. The Respondent shall continue to provide this information every four (4) months until all funds have been provided to the Treasurer or the entitlement to restitution time frame has expired. The Respondent shall provide all information necessary to the State Treasurer's office to appropriately handle such funds as unclaimed property as set forth by statute and regulation.
- (F) Respondent is responsible for all costs associated with the refund process set forth in section 5, including, but not limited to, all costs associated with mailing, all letterhead, envelopes, copying charges, postage and other costs associated with the issuance of refund checks.
- (G) Within four (4) months of entry of the Assurance and Order, Respondent shall file with the Attorney General the following information and shall supplement the information as is necessary:
 - 1. A report verifying and certifying that eligible consumers who have requested a refund have, in fact, received a full refund. Additionally, the Respondent shall verify and certify compliance with each provision of this Assurance with respect to refunds.
 - 2. An alphabetical list of the name and address of each consumer who requested a refund, the amount of each consumer's refund and the total amount of all refunds provided.
- (H) Within ten (10) days of receipt of a request from the Division of Consumer Affairs for evidence that a specific consumer or consumers have received Exhibit A, B, C or D and/or a refund, Respondent shall provide any documents, books and/or records necessary to establish to the satisfaction of the Director of the Division of Consumer Affairs that the refund process complied with this Assurance and Agreed Order. These documents may include, but shall not be limited to, copies of the front and back of canceled checks and/or mailing records indicating that the identified consumer or consumers received the Exhibit A, B, C, D and/or a refund. The documents, books or records shall be physically turned over and provided to the Division of Consumer Affairs' offices no later than ten (10) days from receipt of such request. This paragraph shall in no way limit the Attorney General's or the Division of Consumer Affairs' right to obtain documents, records and/or testimony through any other state or federal law, regulation or rule.

6. PAYMENT OF ATTORNEYS' FEES AND COSTS TO THE STATE

6.1 Respondent shall pay the sum of Twelve Thousand and 00/100 Dollars (\$12,000.00) to the State of Tennessee for attorneys' fees and costs of investigation, prosecution and monitoring for compliance of this matter, which may be used for consumer protection purposes at the sole discretion of the Attorney General. Said payment shall be made by providing the Attorney General or his designated representative a cashier's or certified check made payable to the "State of Tennessee - Attorney General" on the day of execution of this Assurance.

6.2 Respondent shall pay the sum of One Thousand and 00/100 Dollars (\$1,000.00) to the State of Tennessee, Division of Consumer Affairs for costs of investigation of this matter. Said payment shall be made by providing the Attorney General or his designated representative a cashier's or certified check made payable to the "State of Tennessee - Division of Consumer Affairs" on the day of execution of this Assurance.

6.3 Respondent shall pay the sum of One Thousand and 00/100 Dollars (\$1,000.00) to the State of Tennessee, Motor Vehicle Commission for costs of investigation of this matter. Said payment shall be made by providing the Attorney General or his designated representative a cashier's or certified check made payable to the "State of Tennessee - Motor Vehicle Commission" on the day of execution of this Assurance.

7. CIVIL PENALTIES

7.1 Respondent shall pay the sum of Ten Thousand and 00/100 Dollars (\$10,000.00) to the State of Tennessee as a civil penalty pursuant to Tenn. Code Ann. § 47-18-108(b)(3). Said payment shall be made by providing the Attorney General or his designated representative a cashier's or certified check made payable to the "State of Tennessee - Civil Penalty" on the day of execution of this Assurance.

8. CONSUMER EDUCATION FUNDING

8.1 Respondent shall pay the sum of Two Thousand and 00/100 Dollars (\$2,000.00) to the State of Tennessee to fund a consumer education project selected at the sole discretion of the Director of the Division of Consumer Affairs. Said payment shall be made by providing the Attorney General or his designated representative a cashier's or certified check made payable to the "State of Tennessee - Division of Consumer Affairs" on the day of execution of this Assurance.

9. MONITORING AND COMPLIANCE

9.1 Upon request, Respondent agrees to provide books, records and documents to the State at any time, and further, to informally or formally under oath provide testimony and other information to the State relating to compliance with this Assurance. Respondent shall make any requested information available within ten (10) days of the request, at the Office of the Attorney General or at any other location within the State of Tennessee that is mutually agreeable in writing to Respondent and the Attorney General. This section shall in no way limit the State's right to obtain documents, information, or testimony pursuant to any federal or state law, regulation, or rule.

10. PRIVATE RIGHT OF ACTION

10.1 Pursuant to Tenn. Code Ann. §§ 47-18-109 and 47-18-108(e), nothing in this Assurance shall be construed to affect any private right of action that a consumer or any other person may hold against Respondent. Nothing in this Assurance may prevent Respondent from using any amounts paid under the restitutionary section as a set off against any recovery obtained by a consumer in a private right of action. Further, Respondent is not waiving any other defense it may have to any such private right of action.

11. PENALTY FOR FAILURE TO COMPLY

11.1 Respondent understands that upon execution and filing of this Assurance, any subsequent failure to comply with the terms hereof is *prima facie* evidence of a violation of the Tennessee Consumer Protection Act.

11.2 Respondent understands that any knowing violation of the terms of this Assurance shall be punishable by civil penalties of not more than One Thousand Dollars (\$1,000.00) for each violation, in addition to any other appropriate penalties and sanctions, including but not limited to contempt sanctions and the imposition of attorneys' fees and civil penalties. Respondent agrees to pay all court costs and attorneys' fees associated with any successful petitions to enforce this Assurance and Order against the Respondent.

11.3 Only the Attorney General's Office shall have authority to enforce the injunctive provisions of this Assurance or to seek sanctions for violations thereof.

11.4 If the Attorney General determines that Respondent has failed to comply with the terms of this Assurance and if in the Attorney General's sole discretion the failure to comply does not threaten the health or safety of the citizens of the State of Tennessee, the Attorney General agrees to notify the Respondent of such failure to comply and Respondent shall then have 10 days from receipt of such notice to provide a good faith written response to the Attorney General's determination. The response shall include at a minimum:

- (a) a statement that Respondent is in full compliance with the Assurance;
- (b) a detailed explanation of how the alleged violation(s) occurred;
- (c) a statement that the alleged breach has been cured and how; or
- (d) a statement that the alleged breach cannot be reasonably cured within 10 days from receipt of the notice, but (i) Respondent has begun to take corrective action to cure the breach, (ii) Respondent is pursuing such corrective action with due and reasonable diligence, and (iii) Respondent has provided the Attorney General with a detailed and reasonable time table for curing the breach.

Nothing herein shall be construed to exonerate any contempt or failure to comply with any provision of this Order after the date of its entry, to compromise the authority of the Attorney General to initiate a proceeding for any contempt or other sanctions for failure to comply or to compromise the authority of the court to punish as contempt any violation of this Assurance. Further, nothing in this subsection shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State of Tennessee.

12. REPRESENTATIONS AND WARRANTIES

12.1 Respondent represents and warrants that the execution and delivery of this Assurance is its free and voluntary act, that this Assurance is the result of good faith negotiations, and that Respondent agrees that the Assurance and terms hereof are fair and reasonable. The parties warrant that they will implement the terms of this Assurance in good faith. Further, no offer, agreements, or inducements of any nature whatsoever have been made to it by the State of Tennessee, its attorney or any employee of the Attorney General's Office or the Division of Consumer Affairs to procure this Assurance.

12.2 Nothing in this Assurance shall be construed to indicate that the Attorney General, or the Division of Consumer Affairs has authorized, endorsed or encouraged the Respondent to collect the business tax from its customers.

12.3 Respondent represents that signatories to this Assurance have authority to act for and bind the Respondent.

12.4 Respondent will not participate, directly or indirectly, in any activity to form a separate entity or corporation for the purpose of engaging in acts prohibited in this Assurance or for any other purpose which would otherwise circumvent any part of this Assurance or the spirit or purposes of this Assurance.

12.5 Neither Respondent nor anyone acting on its behalf shall state or imply or cause to be stated or implied that the Attorney General, the Department of Revenue, the Division of Consumer Affairs, the Department of Commerce and Insurance, or any other governmental unit of the State of Tennessee approved, sanctioned, or authorized any practice, act, or conduct of the Respondent, except to the extent certain statutes, regulations or formal binding letter ruling of the Commissioner of Revenue expressly permit or authorize specific conduct.

12.6 Acceptance of this Assurance by the State shall not be deemed approval by the State of any of Respondent's advertising or other business practices.

12.7 Within thirty (30) days of the entry of this Assurance, Respondent shall submit a copy of this Assurance to each of their officers, directors, employees and any third parties who act directly or indirectly on behalf of the Respondent as an agent, independent contractor or who are involved in conducting business relating to the terms of this Assurance in the State of Tennessee. Within forty-five (45) days of entry of this Assurance, Respondent shall provide the State with an affidavit verifying and certifying that all required persons have been supplied with a copy of this Assurance.

12.8 Respondent warrants and represents that it is the proper party to this Assurance and Order. Respondent further acknowledges that the State expressly relies upon this representation and warranty, and that if it is false, misleading, deceptive, unfair or inaccurate, the State has the right to move to vacate or set aside this Assurance and Agreed Order, and request that Respondent be held in contempt and/or Respondent's motor vehicle license revoked, if the State so elects.

12.9 Airport Chevrolet, Inc. and Bill Heard Chevrolet, Inc. - Memphis represents that these are the true legal names of the entities entering into this Assurance of Voluntary Compliance and Agreed Order. Respondent understands that the State expressly relies upon this representation and if this representation is false, unfair, deceptive, inaccurate or misleading, the State shall have the right to move to vacate or set aside this Assurance and Agreed Order, and request that Respondent be held in contempt and/or Respondent's motor vehicle license revoked, if the State so elects.

12.10 This Assurance and Agreed Order may only be enforced by the parties hereto.

12.11 The titles and headers to each section of this Assurance are for convenience purposes only and are not intended by the parties to lend meaning to the actual provisions of the Assurance.

12.12 This document shall not be construed against the "drafter" because both parties participated in the drafting of this document.

12.13 This Assurance and Agreed Order constitute the complete agreement of the parties with regard to the resolution of the matters set forth in the State's Petition. This Assurance is limited to resolving only matters set forth in the State's Petition.

12.14 Nothing in this Assurance shall be construed to limit the authority of the Attorney General to protect the interests of the State or the people of the State of Tennessee. In addition, this Assurance shall not bar the State, a District Attorney General, Motor Vehicle Commission, the Department of Revenue or other governmental entity from enforcing laws, regulations or rules against Respondent, including those relating to the same facts giving rise to this Assurance.

12.15 This Assurance shall be binding and effective against Respondent upon Respondent's execution of the Assurance. In the event the court does not approve this Assurance, this Assurance and Agreed Order shall be of no force and effect against the parties.

12.16 Respondent has been advised of its right to legal counsel in connection with this matter. If any Respondent declines to obtain the assistance of legal counsel, that Respondent has expressly waived its right to counsel by executing this Assurance.

12.17 Nothing in this Assurance constitutes an agreement by the State of Tennessee concerning the characterization of the amounts paid hereunder for purposes of any proceeding under the Internal Revenue Code or any state tax laws.

12.18 Respondent waives and will not assert any defenses Respondent may have to any criminal prosecution or administrative action relating to the conduct described in the State's Petition, which defenses may be based, in whole or in part, on the Double Jeopardy or Excessive Fines Clauses of the Constitution or principles set forth in *Hudson v. United States*, 118 S. Ct. 488 (1997), and *Austin v. United States*, 509 U.S. 602 (1993), and agrees that the amount that Respondent has agreed to pay under the terms of this Assurance is not punitive in effect or nature for purposes of such criminal prosecution or administrative action.

12.19 Respondent represents and warrants to the Attorney General and this Honorable Court that it intends to fully comply with all provisions of the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. §§ 47-18-101, *et seq.* and the rules and regulations of the Tennessee Motor Vehicle Commission. If this statement or representation is false, misleading or deceptive in any way, the State may move to set aside this order or request that Respondent be held in contempt.

12.20 Respondent represents and warrants to the Attorney General and this Honorable Court that it did not collect a business tax from consumers which was not separately listed as a business tax after June 30, 2000. If this statement or representation is false, misleading or deceptive in any way, the State may move to set aside this order or request that Respondent be held in contempt.

12.21 To the extent permitted by law, regulation or rule, Respondent may collect a business tax from consumers provided it is collected in a manner which is not in any way unfair, deceptive or misleading.

13. COMPLIANCE WITH ALL LAWS, REGULATIONS AND RULES

13.1 Nothing in this Assurance and Order shall be construed as relieving Respondent of the obligation to comply with all state or federal laws, regulations or rules.

14. FILING OF ASSURANCE

14.1 Upon the execution of this Assurance, the Attorney General shall prepare and file in the Chancery Court for Davidson County a Petition, Agreed Order and this Assurance for the Court's approval. Respondent hereby waives any and all rights which it may have to be heard in connection with judicial proceedings upon the Petition. Respondent agrees to pay all costs of filing such Petition, Assurance and Agreed Order. Simultaneously with the execution of this Assurance, Respondent shall

execute an Agreed Order. This Assurance is made a part of and is incorporated into the Agreed Order. The Respondent agrees that it consents to the entry of this Assurance and Agreed Order without further notice.

**15. APPLICABILITY OF ASSURANCE TO RESPONDENT
AND ITS SUCCESSORS**

15.1 Respondent agrees that the duties, responsibilities, burdens and obligations undertaken in connection with this Assurance shall apply to it, each of its officers, directors, managers, agents, assigns, representatives, employees, partners, subsidiaries, affiliates, parents, related entities, joint venturers, persons or other entities it controls, manages or operates, its successors and assigns, and to other persons or entities acting directly or indirectly on its or their behalf.

16. NOTIFICATION TO STATE

16.1 Any notices required to be sent to the State or the Respondent by this Assurance shall be sent by United States mail, certified mail return receipt requested, or other nationally recognized courier service that provides for tracking services and identification of the person signing for the document. The documents shall be sent to the following addresses:

For the State:
Deputy Attorney General
Office of the Attorney General
Consumer Protection Division
425 Fifth Avenue North, 2nd Floor
Nashville, Tennessee 37243
(615) 741-1671

For the Respondent:
W. T. Heard
Airport Chevrolet--Hyundai, Inc.
3441 Airways Blvd.
Memphis, Tennessee 38116
(901) 348-5500

and
James W. Cameron, III
Harwell, Howard, Hyne, Gabbert
& Manner, P.C.
1800 First American Center
315 Deaderick Street
Nashville, Tennessee 37238
(615) 256-0500

16.2 For two (2) years following execution of this Assurance, Respondent shall notify the Office of the Attorney General, in writing, at least thirty (30) days prior to the effective date of any proposed changes in its corporate structure, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or firm, the creation or dissolution or subsidiaries, or any other changes in Respondent's status that may affect compliance with obligations arising out of this Assurance.

17. COURT COSTS

17.1 All costs associated with the filing and distribution of this Assurance and any other incidental costs or expenses incurred thereby shall be borne by Respondent. No costs shall be taxed against the State as provided by Tenn. Code Ann. § 47-18-116. Further, no discretionary costs shall be taxed to the State.

FOR THE STATE OF TENNESSEE:

PAUL G. SUMMERS
Attorney General & Reporter
B.P.R. No. 6285

CYNTHIA E. KINSER
Deputy Attorney General
B.P.R. No. 13533
Tennessee Attorney General's Office
Consumer Advocate and Protection Division
425 - 5th Avenue North, 2nd Floor
Nashville, Tennessee 37243-0491
(615)741-6422

Approved by:

DAVID A. MCCOLLUM
DIRECTOR
Division of Consumer Affairs
of the Department of
Commerce and Insurance
500 James Robertson Parkway
5th Floor, Davy Crockett Tower
Nashville, TN 37243-0600
(615) 741-4737

FOR RESPONDENT:

JAMES W. CAMERON, III
Counsel of Respondent
B.P.R. No. 5105
Harwell, Howard, Hyne, Gabbert
& Manner, P.C.
1800 First American Center
315 Deaderick Street
Nashville, Tennessee 37238
(615) 256-0500

WILLIAM T. HEARD, JR.
President
Bill Heard Chevrolet Corporation - Memphis, Inc.
Airport Chevrolet, Inc.
Federal Taxpayer Id #: _____
Post Office Box 6749
Columbus, Georgia 31907
Telephone #: _____

39371